

## CHAPTER 4. NOISE ABATEMENT AND CONTROL\*

~~—\*Note~~ Added by Ord. No. 3075 (N.S.), effective 6-15-67. Repealed and new Chapter 4 added by Ord. No. 4487 (N.S.), effective 10-17-74. Repealed and new Chapter 4 added by Ord. No. 6212 (N.S.), effective 2-4-82.

~~—Cross reference(s)~~ Noise abatement procedures, § 85.441.

### SEC. 36.401. PURPOSE, AND INTENT.

Disturbing, excessive or offensive noise interferes with a person's right to enjoy life and property and is detrimental to the public health and safety. Every person is entitled to an environment free of annoying and harmful noise. The purpose of this chapter is to regulate noise in the unincorporated area of the County to promote the public health, comfort and convenience of the County's inhabitants and its visitors.

~~The Board of Supervisors of the County of San Diego finds and declares that:~~

~~—(a) Inadequately controlled noise presents a growing danger to the health and welfare of the residents of the County of San Diego;~~

~~—(b) The making and creating of disturbing, excessive, offensive or unusually loud noises within the jurisdictional limits of the County of San Diego is a condition which has persisted and the level and frequency of occurrence of such noises continue to increase;~~

~~—(c) The making, creation or continuance of such excessive noises which are prolonged or unusual in their time, place and use effect and are a detrimental to the public health, comfort, convenience, safety, welfare, and prosperity of the residents of the County of San Diego;~~

~~—(d) Every person is entitled to an environment in which the noise is not detrimental to his or her life, health, and enjoyment or property; and~~

~~—(e) The necessity in the public interest for the provisions and prohibitions hereinafter contained and enacted is declared to be a matter of legislative determination and public policy and it is further declared that the provisions and prohibitions hereinafter contained and enacted are in the pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare, prosperity, peace and quiet of the County of San Diego and its inhabitants.~~

## SEC. 36.402. DEFINITIONS.

The following definitions shall apply to this chapter: Whenever the following words and phrases are used in this Chapter, unless otherwise defined herein, they shall have the meaning ascribed to them in this section:

(a) Aircraft shall mean any powered vehicle which at any time of its operation is airborne, and is used to transport people or materials for whatever purpose.

(ab) "Ambient noise Sound Level" shall mean the composite of existing noise from all sources near and far. In this context, the ambient noise level constitutes a normal or existing level of environmental noise at a given location and time. Ambient noise is sometimes referred to as background noise.

(be) "Average Sound Level" means the —a sound level in decibels typical of the mean-square A-weighted sound pressure during a stated time period, with reference to the square of the standard reference sound pressure of 20 micropascals. The "average sound level" is equivalent to the industry standard  $L_{EQ}$  levels at a certain place during a given period of time, averaged by the general rule of combination for sound levels, said general rule being set forth in American National Standard Specifications for Sound Level Meters S1. 4-1971. Average sound level is also called equivalent continuous sound level ( $L_{eq}$ ).

(c) "A-weighted sound level" means the sound level in decibels as measured on a sound level meter using the A-weighting network. The A-weighting network is the network for measuring sound that most closely resembles what the human ear hears. Sound measured using the A-weighting network is designated dBA.

(d) Commercial Purpose, Loud Speaking Amplifiers for Advertising, shall mean and include the use, operation or maintenance of any sound amplifying equipment for the purpose of advertising any business, or any goods, or any services, or for the purpose of attracting the attention of the public to, or advertising for, or soliciting patronage or customers to or for any performance, show, entertainment, exhibition, or event, or for the purpose of demonstrating such sound equipment.

(de) "Construction Equipment" shall mean any tools, machinery or equipment used in connection with construction operations including all types of "special construction" equipment as defined in the pertinent sections of the California Vehicle Code, when used in the a construction operation process on any construction site, regardless of whether such construction site be located on highway or off highway.

(ef) "Container" shall mean any receptacle, regardless of contents, manufactured from wood, metal, plastic, paper, or any other material including but not limited to any barrel, basket, box, crate, tub, bottle, can or refuse container.

(fg) "Decibel" shall mean a unit for measuring the amplitude of sound, equal to 20 times the logarithm to the base 10 of the ratio of the pressure of the sound measured to the reference pressure, which is 20 micropascals.

(g) "Disturbing, excessive or offensive noise" means any sound or noise that:

(1) Endangers the health or safety of any person.

(2) Causes discomfort or annoyance to a person of normal sensitivity.

(h) "Emergency wWork" shall mean work: made (1) necessary to restore property to a safe condition following a public calamity, or work (2) required to protect a persons or property from injury imminent exposure to danger or damage or work (3) by a public or private utilities to when restoring utility service.

(i) "Impulsive noise" means a single noise event or a series of single noise events, which causes a high peak noise level of short duration (one second or less), measured at a specific location. Examples include, but are not limited to, a gun shot, an explosion or a noise generated by construction equipment.

(j) "Maximum sound level" means the highest sound level reached when measuring noise with a sound level meter using the A-weighting network and slow time weighting. The "maximum sound level" is equivalent to the industry standard known as L<sub>MAX</sub>.

(ki) "Motor vVehicle"s shall mean any all and self-propelled vehicles as defined in the California Vehicle Code and shall specifically includes, but not be limited to, a "mini-bikes" and aa "go-carts."

(lj) "Noise cControl oOfficer" shall mean the County Director of the Department of Planning and Land Use of the County of San Diego or a person appointed or retained by the Director to perform this function. his duly authorized representatives.

(m) "Occupied property" means property on which there is a building for which a certificate of occupancy has been issued.

(k) Noise Level shall mean "sound level" and the terms may be used interchangeably herein.

(l) Noncommercial Purpose, Loud Speaking Amplifiers for Advertising, shall mean the use, operation, or maintenance of any sound equipment for other than a "commercial purpose." Noncommercial purpose shall mean and include, but shall not be limited to, philanthropic, political, patriotic, and charitable purposes.

~~(m) Person shall mean a person, firm, association, copartnership, joint venture, corporation, or any entity public or private.~~

(n) "Off-road recreational vehicle" means a motor vehicle that is being operated other than on a public or private roadway, whether or not the vehicle was designed or intended for off-road use and may include but is not limited to a motorcycle, go-cart, camper, dune buggy, ATV, racecar, automobile, SUV, pick-up truck or truck. A piece of farm equipment or a motor vehicle being used for an agricultural, military, fire, emergency or law enforcement use or by a public or private utility for work on utilities is not an "off-road recreational vehicle."

(o) "Plainly audible" means any sound that can be detected by a person using his or her unaided hearing faculties. As an example, if the sound source under investigation is a portable or personal vehicular sound amplification or reproduction device, the detection of the rhythmic base component of music is sufficient to verify plainly audible sound. The noise control officer need not determine the title, specific words or the artist performing the music.

~~(p) "Powered mModel vVehicles" shall means, but shall not be limited to airborne, waterborne, or landborne vehicles such as a model airplanes, model boats, or and model vehicles of any type or size which are not designed for carrying persons or property and which may can be propelled in any form other than by manpower or wind power.~~

(q) "Sound aAmplifying eEquipment" shall means any machine or device, mobile or stationary used to amplify music, the human voice, or any sound and does not include a standard automobile radio when used and heard only by the occupants of the vehicle in which it is installed.

(r) "Sound lLevel" (noise level) shall means the weighted sound pressure level obtained by the using e of a sound level meter and frequency weighting network as provided specified in the American National Standards Institute specifications for sound level meters. As used in this chapter, "sound level" means the same as "noise level." (ANSI S1.4-1971, or the latest revision thereof). If the frequency weighting employed is not indicated, the A-weighting is implied.

(s) "Sound lLevel mMeter" shall means an instrument, including a microphone, an amplifier, readout, and frequency weighting networks for the measurement of sound levels, which meets or exceeds the requirements pertinent for a type 1 or type 2 S2A meters in the American National Standards Institute sSpecifications for sSound lLevel mMeters, ANSI- S1.4-198371 or its the latest revision, thereof.

~~\_\_\_(tr) "Sound tTruck" shall means a any motor "vehicle," as that term is defined in the Vehicle Code or other vehicle regardless of motive power whether in motion or stationary having mounted thereon, built-in, or attached thereto that has or uses any sound amplifying equipment, other than a car radio or television.~~

~~\_\_\_(u) "Time weighted average sound level" means the combination of sound pressure levels that measure the cumulative exposure to sound over a given period.~~

~~\_\_\_(s) "Disturbing, Excessive or Offensive Noise shall mean:~~

~~—(1) any sound or noise which constitutes a nuisance involving discomfort or annoyance to persons of normal sensitivity residing in the area.~~

~~—(2) any sound or noise exceeding criteria standards, or levels as set forth in this chapter.~~

~~(t) Water Craft shall mean any boat, ship, barge, craft or floating thing designed for navigation in the water which is propelled by machinery, whether or not such machinery is the principal source or propulsion, but shall not include a vessel possessing a valid marine document issued by the United States Bureau of Customs or any federal agency successor thereto.~~

~~\_\_\_(u) Supplementary Definitions of Technical Terms — definitions of technical terms not defined herein shall be obtained from the American National Standard, "Acoustical Terminology" S1. 1-1961 (R-1971) or the latest revision thereof.~~

~~(Amended by Ord. No. 7428 (N.S.), effective 2-4-88; amended by Ord. No. 8477 (N.S.), adopted 11-8-94, operative 1-1-95; amended by Ord. No. 8975 (N.S.), adopted 12-8-98, operative 1-2-99)~~

~~—Cross reference(s) — Definitions, § 12.101 et seq.~~

## **SEC. 36.403. SOUND LEVEL MEASUREMENT.**

~~\_\_\_(a) Any sound or noise level measurement made pursuant to the provisions of this chapter ordinance shall be measured with a sound level meter using the A-weighting and "slow" response, pursuant to applicable manufacturer's instructions.~~

~~\_\_\_(b) Each measurement shall be conducted at the boundary line of the property on which the noise source is located or any place on the affected property, but no closer than five feet from the noise source.~~

~~\_\_\_(cb) The sound level meter shall be appropriately-calibrated and adjusted as necessary by means of an acoustical calibrator of the coupler-type to assure meter accuracy within the tolerances set forth in the American National Standards Institute specifications for~~

sound level meters, ANSI S1.4-1983<sup>71</sup> or its latest revision. The sound level meter shall be used as provided in the manufacturer's instructions.

~~(c) For outside measurements, the microphone shall be not less than four (4) feet above the ground, at least four (4) feet distant from walls or other large reflecting surfaces and shall be protected from the effects of wind noises by the use of appropriate wind screens and the location selected shall be at any point on the affected property. In cases when the microphone must be located within ten (10) feet of walls or similar large reflecting surfaces, the actual measured distances and orientation of sources, microphone and reflecting surfaces shall be noted and recorded. In no case shall a noise measurement be taken within five (5) feet of the noise source.~~

~~(d) For inside measurements, the microphone shall be at least three (3) feet distant from any wall, ceiling or partition, and the average measurement of at least three (3) microphone positions throughout the room shall be determined.~~

#### **SEC. 36.404. GENERAL SOUND LEVEL LIMITS.**

~~(a) Except as provided in section 36.409 of this chapter, Unless a variance has been applied for and granted, it shall be unlawful for any person to cause or allow the creation of any noise, to the extent that the one-hour average sound level, at any point on or beyond the boundaries of the property on which the sound is produced, which exceeds the applicable limits in Table 36.404 set forth below when the one-hour average sound level is measured at the property line of the property on which the noise is produced or at any location on a property that is receiving the noise.~~

~~, except that:~~

~~— (1) Construction noise level limits shall be governed by Section 36.410 of this chapter; and~~

~~— (2) Where a noise study has been conducted and the noise mitigation measures recommended by that study have been made conditions of approval of a Major Use Permit which authorizes the noise-generating use or activity, and the decision making body approving the Major Use Permit determined that those mitigation measures reduce potential noise impacts to a level below significance, then implementation and compliance with such noise mitigation measures shall be deemed to constitute compliance with this section.~~

**TABLE 36.404**  
**SOUND LEVEL STANDARDS IN DECIBELS (dB)**

ZONE	TIME	APPLICABLE LIMIT ONE-HOUR AVERAGE SOUND LEVEL

		(dBDECIBELS)
(1) RS, RD, RR, RMH, A70, A72, S80, S81, S87, S88, S90, S92, and RV, and RU. Use Regulations with a density of less than 11 dwelling units per acre.	7 a.m. to 10 p.m. 10 p.m. to 7 a.m.	50 45
(2) RRO, RC, RM, C30, S86, RV, RU and V5 and RV and RU. Use Regulations with a density of 11 or more dwelling units per acre.	7 a.m. to 10 p.m. 10 p.m. to 7 a.m.	55 50
(3) S94, V4, and all other commercial zones.	7 a.m. to 10 p.m. 10 p.m. to 7 a.m.	60 55
(4) V1, V2 V1, V2 V1 V2 V3	7 a.m. to 7 p.m. 7 p.m. to 10 p.m. 10 p.m. to 7 a.m. 10 p.m. to 7 a.m. 7 a.m. to 10 p.m. 10 p.m. to 7 a.m.	60 55 55 50 70 65
(5) M50, M52 and, M54	Anytime	70
(6) S82, M56 and M58, and all other industrial zones.	Anytime	75
(7) S88 (see subsection (c) below)		

(b) Where a noise study has been conducted and the noise mitigation measures recommended by that study have been made conditions of approval of a Major Use Permit, which authorizes the noise-generating use or activity and the decision making body approving the Major Use Permit determined that those mitigation measures reduce potential noise impacts to a level below significance, implementation and compliance with those noise mitigation measures shall constitute compliance with subsection (a) above.

(c) S88 zones are Specific Planning Areas which allow different uses. The sound level limits in Table 36.404 above that apply in an S88 zone depend on the use being made of the property. The limits in Table 36.404, subsection (1) apply to property with a residential, agricultural or civic use. The limits in subsection (3) apply to property with a commercial use. The limits in subsection (5) apply to property with an industrial use that would only be allowed in an M50, M52 or M54 zone. The limits in subsection (6) apply to all property with an extractive use or a use that would only be allowed in an M56 or M58 zone.

(d) If the measured ambient noise level exceeds the applicable limit in Table 36.404, noted above, the allowable one-hour average sound level shall be the one-hour average

ambient noise level, plus three decibels. The ambient noise level shall be measured when the alleged noise violation source is not operating.

(e) The sound level limit at a location on a boundary between two ~~(2) zones zoning districts~~ is the arithmetic mean of the respective limits for the two zones. ~~districts~~; ~~provided however, that~~ the one-hour average sound level limit applicable to extractive industries, however, including but not limited to borrow pits and mines, shall be 75 decibels at the property line regardless of the zone in which ~~where~~ the extractive industry is ~~actually~~ located.

(f) A ~~fixed~~-location public utility distribution or transmission facilities located on or adjacent to a property line shall be subject to the sound ~~noise~~-level limits of this section, measured at or beyond six ~~(6)~~-feet from the boundary of the easement upon which the facility ~~equipment~~ is located.

~~(Amended by Ord. No. 7094 (N.S.), effective 3-25-86; amended by Ord. No. 9478 (N.S.), effective 7-19-02; amended by Ord. No. 9621 (N.S.), effective 1-9-04)~~

#### **SEC. 36.405. REPAIRING, REBUILDING OR TESTING MOTOR VEHICLES.**

~~(a) Repairs of Motor Vehicles.~~ It shall be unlawful for any person within the County to repair, rebuild, or test any motor vehicle in such a manner as to cause a disturbing, excessive or offensive noises as defined in ~~§~~Section 36.402(s) of this chapter.

~~(b) On Highway.~~ Violations for ~~exceeding applicable noise level limits as to persons operating motor vehicles on a public street or highway in the County shall be prosecuted under applicable California Vehicle Code provisions and under Federal Regulation adopted pursuant to 42 U.S.C. 4905(a)(1)(A), (B), and (C)(ii), (iii) for which enforcement responsibility is delegated to local governmental agencies.~~

~~(c) Off Highway.~~ Except as otherwise provided for in this ordinance, it shall be unlawful to operate any motor vehicle of any type on any site other than on a public street or highway as defined in the California Vehicle Code in a manner so as to cause noise in excess of those noise levels permitted for On-Highway motor vehicles as specified in the table "35 miles per hour or less speed limits" contained in Section 23130 of the California Vehicle Code.

~~(d) Emergency Vehicles.~~ Nothing in this section shall apply to authorized emergency vehicles when being used in emergency situations.

~~(e) Urban Transit Buses.~~ Buses as defined in the California Vehicle Code shall at all times comply with the requirements of this section.

#### **SEC. 36.406. POWERED MODEL VEHICLES.**

It shall be unlawful for any person to operate ~~any~~ powered model vehicle ~~between~~ except between the hours of 7 a.m. and 9 p.m. and 7 a.m. and then only in such a manner so as not to emit noise in excess of those levels set forth in Section 36.404; ~~However, if~~ powered model vehicles are operated in a County public parks shall meet the daytime sound level standards for an RS zone measured at a point ~~more than 100 feet from the~~ park property line or 100 feet from where the model vehicle is being operated, whichever is less, the noise level shall be determined at a distance of 100 feet from the noise source instead of at the property line, and noises from powered model vehicles measured at that distance in excess of the noise limits specified in Section 36.404 are prohibited.

#### **SEC. 36.407. REFUSE VEHICLES & PARKING LOT SWEEPERS.**

No person shall operate, or allow permit to be operated, a refuse compacting, processing, or collection vehicle or a parking lot sweeper between the hours of 10 p.m. to 6 a.m., in or within 100 feet adjacent of to any residential zone, unless a variance has been obtained applied for and granted pursuant to this chapter.  
(Amended by Ord. No. 7428 (N.S.), effective 2-4-88)

#### **SEC. 36.408. WATERCRAFT.**

~~—Violations for excessive noise of watercraft operating in waters under the jurisdiction of the County of San Diego shall be prosecuted under applicable provisions of the California Harbors and Navigation Code.~~

#### **SEC. 36.409. AIRPORTS.**

~~—All noise emanating from airport activities other than that produced by aircraft shall be subject to all of the regulations contained in this ordinance.~~

#### **SEC. 36.40810. HOURS OF OPERATION OF CONSTRUCTION EQUIPMENT.**

Except for emergency work, it shall be unlawful for any person to operate or cause to be operated, construction equipment;

(a) ~~It shall be unlawful for any person to operate construction equipment Bbetween the hours of 7 p.m. of any day and 7 a.m. of the following day.~~

(b) ~~It shall also be unlawful for any person to operate construction equipment Oon a~~ Sundays, or a holiday. For purposes of this section, a holiday means January 1st, the last Monday in May, July 4th, the first Monday in September, December 25th and any days appointed by the President as a special national holiday, or the Governor of the State as a

~~special State holiday, or the Board of Supervisors for a public fast, Thanksgiving, or holiday, but~~ A person may, however, operate construction equipment on a Sunday or holiday the above-specified days between the hours of 10 a.m. and 5 p.m. at the person's his residence or for the purpose of constructing a residence for himself or herself, provided that ~~the average sound level does not exceed 75 decibels during the period of operation and that the operation of construction equipment is not carried out for financial consideration or other consideration of any kind and does not violate the limitations in sections 36.409 and 36.410.~~ profit or livelihood.

~~—(c) It shall also be unlawful to operate any construction equipment so as to cause at or beyond the property line of any property upon which a legal dwelling unit is located an average sound level greater than 75 decibels between the hours of 7 a.m. and 7 p.m. (Amended by Ord. No. 9700 (N.S.), effective 2-4-05)~~

### **SEC. 36.409. SOUND LEVEL LIMITATIONS ON CONSTRUCTION EQUIPMENT.**

Except for emergency work, it shall be unlawful for any person to operate construction equipment or cause construction equipment to be operated, where the time weighted average sound level exceeds 75 decibels for more than eight hours during any 24-hour period, when measured at the boundary line of or on any occupied property. The sound levels shall be corrected for time duration in accordance with the following table:

**TABLE 36.409.**  
**DECIBEL ALLOWANCES FOR PERIODS**  
**WITHIN A 24-HOUR PERIOD**

<u>TOTAL DURATION</u>	<u>DECIBEL LEVEL ALLOWANCE</u>	<u>TOTAL DECIBEL LEVEL</u>
<u>Up to 15 minutes</u>	<u>+15</u>	<u>90</u>
<u>Up to 30 minutes</u>	<u>+12</u>	<u>87</u>
<u>Up to 1 hour</u>	<u>+9</u>	<u>84</u>
<u>Up to 2 hours</u>	<u>+6</u>	<u>81</u>
<u>Up to 4 hours</u>	<u>+3</u>	<u>78</u>
<u>Up to 8 hours</u>	<u>0</u>	<u>75</u>
<u>Up to 10 hours</u>	<u>-1</u>	<u>74</u>

Up to 12 hours

-2

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**SEC. 36.410. SOUND LEVEL LIMITATIONS ON IMPULSIVE NOISE.**

In addition to the general limitations on sound levels in section 36.404, the following additional sound level limitations shall apply:

(a) Except for emergency work or work on a public road project, no person shall produce or cause to be produced an impulsive noise that exceeds the maximum sound level shown in Table 36.410A, when measured at the boundary line of or on any occupied property for 25 percent of the minutes in the measurement period, as described in subsection (c) below. The maximum sound level depends on the use being made of the occupied property. The uses in Table 36.410A are as described in the County Zoning Ordinance.

**TABLE 36.410A.**  
**MAXIMUM SOUND LEVEL (IMPULSIVE) MEASURED**  
**AT OCCUPIED PROPERTY IN DB(A)**

<u>OCCUPIED PROPERTY USE</u>	<u>dB(A)</u>
<u>Residential, village zoning or civic use</u>	<u>82</u>
<u>Agricultural, commercial or industrial use</u>	<u>85</u>

(b) Except for emergency work, no person working on a public road project shall produce or cause to be produced an impulsive noise that exceeds the maximum sound level shown in Table 36.410B, when measured at the boundary line of or on any occupied property for 25 percent of the minutes in the measurement period, as described in subsection (b) below. The maximum sound level depends on the use being made of the occupied property. The uses in Table 36.410B are as described in the County Zoning Ordinance.

**TABLE 36.410B.**  
**MAXIMUM SOUND LEVEL (IMPULSIVE) MEASURED**  
**AT OCCUPIED PROPERTY IN DB(A) (PUBLIC ROAD PROJECT)**

<u>OCCUPIED PROPERTY USE</u>	<u>dB(A)</u>
<u>Residential, village zoning or civic use</u>	<u>85</u>
<u>Agricultural, commercial or industrial use</u>	<u>90</u>

(c) The minimum measurement period for any measurements conducted under this section shall be one hour. During the measurement period a measurement shall be conducted every minute from a fixed location on an occupied property. The measurements shall measure the maximum sound level during each minute of the measurement period. If the sound level caused by construction equipment or the producer of the impulsive noise, exceeds the maximum sound level for any portion of any minute it will be deemed that the maximum sound level was exceeded during that minute.

#### **SEC. 36.411. CONTAINERS AND CONSTRUCTION MATERIAL.**

It shall be unlawful for any person to handle, ~~or~~ transport, or cause to be handled or transported in any public place, any container or any construction material in such a way as to create a disturbing, excessive, or offensive noise as defined ~~in~~under ~~Section~~ 36.402(s) of this chapter.  
~~ordinance.~~

#### **SEC. 36.412. SIGNAL DEVICE FOR FOOD TRUCKS.**

No person shall operate or cause to have operated or used any sound signal device other than sound-amplification equipment attached to a motor vehicle wagon or manually propelled cart from which food or any other items are sold which emits a sound signal more frequently than once every ten minutes in any one street block and with a duration of more than ten seconds for any single emission. The sound level of this sound signal shall not exceed ninety (90) decibels at fifty (50) feet from the point of the noise source.

#### **SEC. 36.413. MULTIPLE FAMILY DWELLING UNITS.**

Notwithstanding any other provisions of this chapter ordinance-it shall be unlawful for ~~a~~any person to create, maintain or cause to be maintained any sound within the interior of ~~a~~any multiple family dwelling unit which causes the noises level to exceed the ~~those~~ limits set forth below in any ~~another~~ dwelling unit:

#### **TABLE 36.413** **ALLOWABLE INTERIOR NOISE LEVEL**

Type of Land Use	Hours		Allowable Interior Noise Level (dBA)	
		No Time	1 min in 1 hour	5 min in 1 hour
Multifamily	10 pm- 7 am	> 45	40	35
Residential	7 am-10 pm	> 55	50	35

( > greater than)

( less than or equal to)

~~— The monitoring procedures outlined under Section 36.403 shall be followed in enforcing this section.~~

#### **SEC. 36.414. GENERAL NOISE PROHIBITIONS.REGULATIONS.**

In addition to the general limitations on sound levels in section 36.404, the following additional prohibitions shall apply:

~~\_\_\_ (a) General Prohibitions. In the absence of objective measurement by use of a sound level meter, additionally, it shall be unlawful for a any person to make, continue, or cause to be made or continued, within the limits of said County, any disturbing, excessive or offensive noise, which causes discomfort or annoyance to a reasonable persons of normal sensitivity residing in the area.~~

(b) The characteristics and conditions which should be considered in determining whether a violation of the provisions of this section has been committed exists, include, but are not limited to, the following:

\_\_\_ (1) The level of noise,;

\_\_\_ (2) Whether the nature of the noise is usual or unusual,;

\_\_\_ (3) Whether the origin of the noise is natural or unnatural,;

\_\_\_ (4) The ambient noise level, of the background noise,;

\_\_\_ (5) The proximity of the noise to a place where someone sleeps.ing facilities,;

\_\_\_ (6) The nature and zoning of the area within which the noise emanates and where it is received,;

~~\_\_\_ (7) The density of the inhabitation of the area within which the noise emanates,;~~

\_\_\_\_(78) The time of the day or night the noise occurs.;

\_\_\_\_(89) The duration of the noise.;

\_\_\_\_(940) Whether the noise is recurrent, intermittent, or constant.  
; and

\_\_\_\_(104) Whether the noise is produced by a commercial or noncommercial activity.

\_\_\_\_(cb) ~~Disturbing, Excessive or Offensive Noises.~~ The following acts, among others, are declared to be disturbing, excessive and offensive noises that in violation of this chapter section and are unlawful; but said enumeration shall not be deemed to be exclusive, namely:

\_\_\_\_(1) ~~Horns, Signaling Devices, etc.~~ Violations for disturbing, excessive or offensive noises associated with the Unnecessarily using or operating or allowing another person to use or operate on of a vehicle horns, signaling devices or other similar device, other than as regulated by the , etc., on automobiles, motorcycles, or any other vehicle, except as provided in Section 36.412, shall be prosecuted under applicable provisions of the California Vehicle Code.

\_\_\_\_(2) ~~Radios, Television Sets, Phonographs, and Similar Devices.~~

\_\_\_\_(2i) ~~Uses Restricted.~~ The Using, operating, playing or allowing another person to permitting to be played, used or operated or play, any radio, musical instrument, phonograph, television set or other device for the production or reproduction of sound;  
~~in such manner;~~

\_\_\_\_(A) ~~That as to disturbs the peace, quiet and comfort of neighboring residents or persons of normal sensitivity residing in the area.~~

;

\_\_\_\_(B) ~~or in a manner to~~ That exceeds the those levels set forth in sSection 36.404 when measured at a distance of twenty-five feet from a such device operating in a public right-of-way.

\_\_\_\_(C) That exceeds the levels in section 36.404 when measured at a distance of twenty-five feet from a device for the production or reproduction of sound operated in a County park unless or public space, except that subject to a permit has been obtained from issued by the County of San Diego Parks and Recreation Department specifying the time, location and other conditions under which, amplified sound may be allowed permitted within a Ceounty park,s A person using, operating or playing a device for the

production or reproduction of sound in a County park, however shall ~~provided that said sound does not exceed a level of 90 decibels when measured fifty feet from the source or exceed the those levels set forth in sSection 36.404 when measured at the park boundary.~~ This Subsection 36.412 (c)(2)(C) shall ~~provision will be enforced by the Director, Parks and Recreation Department, or his duly authorized representative.~~

(3ii) Prima Facie Violations. It shall be a prima facie violation of section 36.412(c)(2)(A) if a device for the production or reproduction of sound that is being operated, used or played is ~~The operation of any such set, instrument, phonograph, television set, machine or similar device in such a manner as to be plainly audible at a distance of fifty (50) feet or more from the building, structure or vehicle in which it is located, shall be prima facie evidence of a violation of this section.~~

(43) Loud Speaking Amplifiers for Advertising. ~~Playing, using, The use, operating, or allowing the permitting to be played, used or operated of any sound production or reproduction device or machine including but not limited to radio receiving sets, phonographs, musical instruments, loudspeakers, and sound amplifiers, for commercial or business advertising purposes in, on, upon, over, or across any street, alley, sidewalk, park, or public property in such a manner as to violate the provisions of this ordinance is prohibited. This subsection provision shall not be apply ieable to sound amplifying equipment mounted on any sound truck or vehicle for commercial or noncommercial purposes where the owner or operator complies with the following requirements:~~

(Ai) The only sound emitted is permitted are music or human speech and the music or speech emitted is not obscene, lewd, profane or slanderous.

(Bi) The sound truck is only oPeratedions are permitted between the hours of 8:00 a.m. and 9:00 p.m. or after 9:00 p.m. during public events and affairs of general public interest, to the general public.

(Cii) The sSound amplifying equipment is shall be not being operated unless the sound truck upon which such equipment is mounted is traveling operated at a speed of at least ten (10) miles per hour, except when the said truck is stopped or impeded by traffic. If the sound truck is Where stopped by traffic the said sound amplifying equipment shall not be operated for longer than one minute at each stop.

(Div) Sound is not emitted shall not be issued within one hundred (100) yards of a hospitals, schools, churches, or courthouses.

(Ev) The volume of sound does shall be controlled so that said volume is not raucous, jarring, disturbing, or a nuisance to persons within the area of audibility and so that the volume of sound shall not exceed a sound level of 65 decibels (on the "A" scale)

at a distance of 50 feet from the sound amplifying equipment as measured by a sound level meter, ~~which meets the American National Standard ANSI S1. 4-1971 or the latest revision thereof.~~

\_\_\_(Fvi) ~~No sound amplifying equipment is shall be operated unless the axis of the center of the any sound reproducing equipment is used shall be parallel to the direction of travel of the sound truck;~~ provided, however, that Any sound reproducing equipment, however, may be so placed upon the said sound truck as to not vary more than 15° either side of the axis of the center of the direction of travel.

\_\_\_(Gvii) ~~No sound truck with its amplifying device in operation shall be driven on the same street past the same point more than twice in a period of one hour.~~

\_\_\_(54) ~~Yelling, Shouting, etc. Causing or allowing unreasonably loud or dDisturbing verbal noise or raucous yelling, shouting, hooting, whistling or singing on the public streets, particularly between the hours of 10 p.m. and 8 a.m. or at any time or place that is offensive or annoying so as to annoy or disturb the quiet, comfort, or repose of neighboring residents or to a persons of normal sensitivity, within the area for whatever reason, is prohibited.~~

\_\_\_(5) ~~Hawkers and Peddlers. The shouting or crying out of any peddlers, hawkers, and vendors which disturbs the peace and quiet of a neighborhood or persons of normal sensitivity is prohibited. This provision shall not be construed to prohibit the selling by outcry of merchandise, food and beverages at sporting events, parades, fairs, celebrations, festivals, circuses, carnivals and other similar special events for public entertainment.~~

\_\_\_(6) ~~Drums, Other Instruments. The use of any drum or other instrument or device of any kind for the purpose of attracting attention by the creation of noise within the County is prohibited. This provision shall not apply to any person who is a participant in a school band or legally authorized parade or who has been otherwise duly authorized by the County of San Diego to engage in such conduct.~~

\_\_\_(67) ~~Animals. Owning, possessing or harboring an The keeping or maintenance, or the permitting to be kept or maintained upon any premises owned, occupied, or controlled by any person of any animal which by any frequent or long continued noise shall causes annoyance or discomfort to a persons of normal sensitivity in the vicinity;~~ provided, however, that nothing contained herein shall be construed to apply to occasional noises emanating from legally operated dog and cat hospitals, humane societies, pounds, farm and/or agricultural facilities, or areas where keeping of animals are permitted. The written affirmation by two persons having separate residences that an animal has caused frequent or long continued noise, that has caused them annoyance or discomfort violation of this section disturbs the peace and quiet of said persons shall be prima facie evidence of a violation of this section. This subsection does not apply to

animal noise emanating from a legally operated animal hospital, humane society, County Department of Animal Services facility, farm or other agricultural facility where keeping animals is allowed.

~~—(8) Schools, Courts, Churches, Hospitals. The creation of any noise on any street, sidewalk, or public place adjacent to any school, institution of learning (except recreational areas of schools), church, court or library, while the same are in use; or adjacent to a hospital, rest home, or long term medical or mental care facility which noise interferes with the workings of such institution or which disturbs or annoys patients in the hospital, rest home, or long term medical or mental care facility, provided conspicuous signs are displayed in such streets, sidewalks, or public places indicating the presence of a school, institution of learning, church, court, library, rest home or long term medical or mental care facility, is prohibited.~~

~~—(79) Steam Whistles. Operating The operation, use or causing to be operated or used of any steam whistle attached to any stationary boiler, is prohibited except to give notice of the time to start or stop work or as a sound signal of imminent danger.~~

~~—(810) Engines and Motor Vehicles. Using or allowing the use of a motor vehicle to knowingly produce a noise that causes annoyance or discomfort to a person of normal sensitivity in the vicinity of the noise Any disturbing or raucous noises caused off streets or highways by racing or accelerating the engine of any motor vehicle while moving or not moving, by the willful backfiring of the any engine, and exhaust from the engine tailpipe or muffler, or from the screeching the of tires, operating without a muffler, altering the muffler or any other action that causes a disturbing, excessive or offensive noise, is prohibited.~~

## **SEC. 36.415. BURGLAR ALARMS.**

~~(a) No person shall install or operate a Any building burglar alarm in a residence or any other building that is not equipped with a functioning must have an automatic cutoff device that, capable of terminating any noise emanating from the alarm its operation within 15 minutes from of the time the alarm it is activated.~~

~~Notwithstanding the requirements of this provision, any member of the Sheriff's Department of the County of San Diego shall have the right to take such steps as may be reasonable and necessary to disconnect any such alarm during the period of its activation.~~

~~(b) No motor vehicle owner of a motor vehicle shall install or have in his or her possession a motor vehicle that is not equipped with a functioning have in operation an audible automatic cutoff device that terminates any noise emanating from the burglar alarm therein unless such burglar alarm shall be capable of terminating its operation within fifteen (15) minutes from of the time the alarm it is activated.~~

~~Notwithstanding the requirements of this provision, any member of the Sheriff's Department of the County of San Diego shall have the right to take such steps as may be reasonable and necessary to disconnect any such alarm installed on a motor vehicle at any time during the period of its activation.~~

(c) Notwithstanding the requirements of this section, a law enforcement officer may deactivate a building or motor vehicle alarm after the alarm is activated.

#### **SEC. 36.416. NOISE FROM OFF-ROAD RECREATIONAL VEHICLES.**

In addition to the general limitations on sound levels in section 36.404, no person shall operate or allow the operation of an off-road recreational vehicle on private property that produces a noise when measured at the boundary line of or on any occupied property that at any time exceeds the following maximum sound levels: 82 decibels between the hours of 7 a.m. and 7 p.m., 77 decibels between the hours of 7 p.m. and 10 p.m. and 55 decibels between the hours of 10 p.m. and 7 a.m.

#### **SEC. 36.416. AIRCRAFT.**

~~—Violations for exceeding applicable noise level limits as to persons operating aircraft shall be prosecuted under applicable law.~~

#### **SEC. 36.417. EXEMPTIONS.**

(a) This chapter shall not apply to:

(1a) Emergency Work. The provisions of this chapter shall not apply to any Emergency work, as defined in this chapter, herein, provided that (A1) the person performing the work notifies nNoise cControl oOfficer has been notified in advance, if possible, or as soon as practicable after the said emergency; and (B2) any vehicle, device, apparatus, or equipment used, related to or connected with the emergency work is designed, modified, or equipped to reduce noise sounds produced to the lowest possible level consistent with effective operation of the such vehicle, device, apparatus, or equipment.

(b) Sporting, Entertainment, Public Events. The provisions of this chapter shall not apply to:

(24) Noise Those reasonably related to sounds emanating from authorized school: (A) bands, school (B) athletic activities and school (C) entertainments events.

(32) Sporting, entertainment and public events which are conducted pursuant to a license or permit issued by the County, of San Diego within the scope of the license or

permit. This section is not intended to excuse the act of an individual not participating in the event who violates this chapter. for noise exceeding criteria, standards or levels as set forth in this chapter.

—(3) Those reasonable sounds emanating from a sporting, entertainment, or public event; provided, however, it shall be unlawful to exceed those levels set forth in Section 36.404 when measured at or within the property lines of any property which is developed and used either in part or in whole for residential purposes unless a variance has been granted allowing sounds in excess of said levels.

(4) The operation of an emergency generator after a power failure, by an employee or agent of a law enforcement agency, fire department, hospital or other medical or surgical facility that is providing emergency medical services.

(5) The reasonable testing of an emergency generator by any person provided that the testing is conducted between the hours of 7 a.m. and 7 p.m.

(6e) Federal or State Preempted Activities. The provisions of this chapter shall not apply to Any activity to the extent regulation thereof has been preempted by State or Federal law.

(b) Section 36.404 shall not apply to:

(1d) Minor Maintenance to Residential Property. The provisions of Section 36.404 shall not apply to Noise sources associated with routine property minor maintenance to property used either in part or in whole for residential purposes, provided said activities takes place between the hours 7 a.m. and 8 p.m. on any day except Sunday; or between the hours of 10 a.m. and 8 p.m. on Sunday.

(2e) Agricultural Operations. The provisions of Section 36.404 shall not apply to Equipment associated with agricultural operations, provided that; each piece of all equipment and machinery powered by an internal-combustion engines is equipped with an appropriate proper muffler and air intake silencer in good working order; and one of the following applies; provided further that:

(A1) Operations do not take place between 7 p.m. and the following 7 a.m. of the following day; or

(B2) The Such operations and equipment are utilized for the preparation, planting, harvesting, protection or salvage of agricultural crops during periods of potential or actual frost damage or other adverse weather conditions.

; or

~~\_\_\_\_\_ (C3) The Such operations and equipment are used for associated with agricultural pest control, provided the application is made in accordance with regulations and or procedures administered by the County Department of Agriculture,; or~~

~~(4) Such operations and equipment are associated with the application of agricultural chemicals provided the application is made in accordance with acceptable agricultural practices or upon the recommendation of an agricultural specialist.  
(Amended by Ord. No. 7428 (N.S.), effective 2-4-88)~~

#### **SEC. 36.418. RESPONSIBILITY FOR MANNER OF ENFORCEMENT.**

~~The County Sheriff shall have primary responsibility for the enforcing ement of sSections 36.405, 36.407, 36.408, 36.4112, 36.412, 36.413, 36.414 and 36.415. When this chapter requires measurements to enforce these sections, the noise control officer shall assist the Sheriff. 5, provided, however, that whenever noise level measurements are required for enforcement, the Sheriff shall be assisted by the Noise Control Officer and/or his duly authorized representatives with instrumentation operated and provided by the Noise Control Officer. The nNoise cControl oOfficer shall have primary responsibility for the enforcing ement of all other sections provisions of this chapter. Pursuant to Penal Code sSection 836.5, a person authorized to enforce this chapter the above specified enforcement officers may arrest a person without a warrant if he or she has when they have reasonable cause to believe that the person has committed a misdemeanor in his or her their presence that violates which is a violation of this chapter. Violations of these regulations will be prosecuted in the same manner as other misdemeanor violations of the County Code; however, nothing in these regulations shall prevent the Sheriff or the Noise Control Officer or his duly authorized representatives from efforts to obtain voluntary compliance by way of warning, notice or educational means.~~

~~State law reference(s) — Arrest without warrant, Penal Code, § 836.5.~~

#### **SEC. 36.419. VIOLATIONS — MISDEMEANORS.**

~~— Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding five hundred dollars (\$500.00) or be imprisoned in the County jail for a period not exceeding six (6) months, or by both such fine and imprisonment. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.~~

#### **SEC. 36.41920. VIOLATIONS — ADDITIONAL REMEDIES; INJUNCTIONS.**

~~The noise control officer may order a person to cease violating any section of this chapter that the noise control officer enforces. The noise control officer may, in addition~~

to using any remedy provided in section 11.121 of this code, summarily abate a public nuisance caused by any act that violates this chapter if the noise control officer determines there is an immediate threat to the health or safety of any person. As an additional remedy the operation or maintenance of any device, instrument, vehicle, machinery, or other item in violation of any provision of this chapter for which operation or maintenance causes discomfort or annoyance to persons of normal sensitivity or which endangers the comfort, repose, health, or peace of residents in the area, shall be deemed and is declared to be a public nuisance and shall be subject to summary abatement in order to preserve or protect the public health, safety or welfare, abatement by a restraining order or injunction issued by a court of competent jurisdiction, or by abatement and assessment in accordance with the Uniform Public Nuisance Abatement Procedure contained in Chapter 2, Division 6, Title 1 (commencing with Section 16.201) of this Code.

(Amended by Ord. No. 7141 (N.S.), effective 6-26-86)

#### **SEC. 36.42021. FALSE STATEMENT.**

No person shall knowingly provide false information, either orally or in writing, make a false statement or submit a false document to the nNoise cControl oOfficer related as to any matter within the noise control officer's his jurisdiction.

#### **SEC. 36.42122. REPRODUCTIONS OR ALTERATION OF DOCUMENTS. PERMITS, ETC.**

No person shall make, reproduce or, alter, or cause to be made, reproduced, or altered any permit, certificate, or other document issued by the nNoise cControl oOfficer or required by this chapter, for if the purpose of evading, attempting such reproduction or alteration is to evade or violating any requirement the provisions of this chapter.

#### **SEC. 36.42223. DISPLAY OF PERMITS, VARIANCE OR OTHER DOCUMENT.**

Any permit, variance certificate, or other document that authorizes any activity regulated by this chapter notice required herein shall be displayed or maintained on the property or at the location where the activity is occurring. premises designated thereon.

#### **SEC. 36.4234. VARIANCES.**

(a) A person who proposes to perform non-emergency work on a public right-of-way, public utility facility, public transportation facility or some other project for the benefit of the general public, who is unable to conform to the requirements of this chapter may apply to the County for a variance authorizing the person to temporarily deviate from the requirements of this chapter.

(b) The nNoise cControl oOfficer shall only grant a variance if the officer makes findings that the applicant's proposed activity cannot feasibly be done in a manner that would comply with this chapter and the applicant has no other reasonable alternative available.

(c) When evaluating a request for a variance the noise control officer shall determine the impact any noise that does not comply with the limits of this chapter will have on each property likely to be affected by the noise. The evaluation shall include the uses on each property on which the non-complying noise will be received, what activities will be impacted on the property and the duration of each impact. The evaluation shall also include the value to the community of the work being done by the applicant, the cost to the community if the applicant is unable to perform the work, the cost to the applicant for mitigating the non-complying noise and any cost to the occupant of the impacted property during the time the period of the impacted property will be subject to the non-complying noise.

(d) If the noise control officer grants a variance under this section the variance may impose time limitations on the non-complying activity and may include mitigation measures that the applicant is required to adopt. evaluate all applications for variances from the requirements of this article and may grant said variances with respect to time for compliance, subject to such terms, conditions, and requirements as he may deem reasonable to achieving compliance with the provisions of this Chapter. Each such variance shall set forth in detail the approved method of achieving compliance and a time schedule for its accomplishment. If in the judgment of the Noise Control Officer the time for compliance cannot be reasonably determined, a variance to cause the noise may be issued for a specified period of time, subject to revocation or modification after review by the Noise Control Officer at interim times to be designated by the Noise Control Officer in the variance. In determining the reasonableness of the terms of any proposed variance, said Noise Control Officer shall consider the magnitude of nuisance caused by the offensive noise, the uses of property within the area of impingement by the noise, operations carried on under existing nonconforming rights or conditional use permits or zone variances, the time factors related to study, design, financing and construction of remedial work, the economic factors related to age and useful life of the equipment and general public interest and welfare.

#### **SEC. 36.4245. APPLICATIONS FOR PERMITS AND VARIANCES.**

An Every applicant for a permit or variance required by this chapter shall file an application with the nNoise cControl oOfficer a written application on a form provided prescribed by the said oOfficer. The application shall not be deemed complete until the applicant provides all information required by the application and any supplemental information requested by the noise control officer.state the name and address of the

applicant, the nature of the noise source involved, and such other information as the Noise Control Officer may require.

**SEC. 36.4256. REQUEST APPLICATION FEES FOR DUPLICATE PERMIT OR VARIANCE CERTIFICATE.**

A person who loses the certificate issued by the noise control officer that grants a variance shall request a duplicate certificate from request for a duplicate permit or variance shall be made in writing to the nNoise cControl oOfficer within 10 days after the certificate is destroyed, lost, or defaced. ~~ment of a permit or variance.~~  
(Amended by Ord. No. 9689, operative 2-4-05, effective 2-13-05)

**SEC. 36.427. [RESERVED].**

(Repealed by Ord. No. 9689, operative 2-4-05, effective 2-13-05)

**SEC. 36.4268. ACTIONS ON APPLICATIONS.**

(a) The nNoise cControl oOfficer shall review an application for a variance to determine if the applicant has provided all information necessary to render a decision on the application. If the application is not complete, the noise control officer shall notify the applicant within 15 days from the date the application was submitted what additional information the applicant needs to provide to make the application complete. If the applicant does not provide the additional information within 15 days of the notice the noise control officer shall deny the application. ~~act, W~~within 30 days after receiving a completed application the noise control officer shall deny, approve or grant conditional approval of the request for a variance and notify the applicant in writing of the action taken, if possible, on an application for a permit or variance and shall notify the applicant in writing by mail or in person of the action taken, namely, approval, conditional approval, or denial. Notice of the action taken shall be deemed to have been given when the written notification has been deposited in the mail, postpaid, addressed to the address shown on the application, or when personally delivered to the applicant or his representative. Before acting on an application for a variance or permit, the Noise Control Officer may require the applicant to furnish further information or further plans or specifications. Failure of the applicant to provide such further information or further plans or specifications within 10 days shall be grounds for denial of the permit or variance.

(b) ~~If In the event of denial of an application for a permit or variance, the nNoise cControl oOfficer denies the request for a variance the notice of denial shall state the reasons for the denial. If the noise control officer conditionally approves the variance request the notice of conditional approval shall clearly state the conditions and the reasons for the conditional approval. notify the applicant in writing of the reasons therefor. Service of this notification may be made in person or by mail, and such service~~

~~may be proved by the written acknowledgment of the persons served or affidavit of the person making the service. The Noise Control Officer shall not accept a further application unless the applicant has complied with the objections specified by the Noise Control Officer as his reasons for denial.~~

(c) An applicant may deem a variance denied if the application has not been acted on within 30 days after the application was submitted or within 15 days after providing additional information requested by the noise control officer, whichever is later.

#### **~~SEC. 36.429. APPLICATIONS DEEMED DENIED.~~**

~~—The applicant may at his option deem the permit or variance denied if the Noise Control Officer fails to act on the application within 30 days after filing, or within 10 days after applicant furnishes the further information, plans and specifications requested by the Noise Control Officer, whichever is later.~~

#### **~~SEC. 36.42730. FAILURE TO COMPLY WITH CONDITIONS. PROVISION OF SAMPLING AND TESTING FACILITIES.~~**

~~If aA person granted a variance fails to comply with a condition of the variance or this chapter the noise control officer may suspend the variance until the person complies or may revoke the variance, operating under a permit or variance shall provide and maintain such sampling and testing facilities as specified in the permit or variance.~~

#### **~~SEC. 36.42831. APPEALS.~~**

A person may appeal a decision of the noise control officer by filing a notice of appeal with the Clerk of the Board of Supervisors (Clerk) and paying the appeal fee for the appeal of an administrative decision, as provided in section 362 of the County Administrative Code, wWithin 15 40-days after notice, by the nNoise cControl oOfficer:

(a) Serves a notice, of denial or conditional approval of a variance or the date a variance request is deemed denied.  
~~or a permit, or within 10 days after the effective date of the revocation of a permit or variance by the Noise Control Officer, the affected person may petition the Noise Control Hearing Board, in writing, for a public hearing. The Hearing Board, after notice and a public hearing after filing the petition, may sustain, reverse or modify the action of the Noise Control Officer; such order may be made subject to specified conditions.~~

(b) Serves a notice of suspension or revocation of a variance.

#### **SEC. 36.432. FILING FEE.**

~~—Request for hearing shall be initiated by the filing of a petition in triplicate with the Clerk of the Hearing Board at the County of San Diego Administration Center at 1600 Pacific Highway, San Diego, California and the payment of a fee of \$25.00. A copy of the petition shall also be served on the Noise Control Officer. Service may be made in person or by mail and service may be proved by written acknowledgment of the person served or by the affidavit of the person making service.~~

#### **SEC. 36.42933. CONTENTS OF NOTICE OF APPEAL. PETITION.**

~~A notice of appeal petition to review a denial or conditional approval of a permit or variance shall include a copy of the permit or variance application, and a copy of the notice of denial or conditional approval Noise Control Officer's action setting forth the reasons for the denial or the conditions of the approval, and the reasons for the appeal. A notice of appeal of a suspension or revocation of a variance shall include a copy of the variance, a copy of the noise control officer's notice of suspension or revocation and the reasons for the appeal. The appellant shall not be allowed to raise any grounds for appeal not contained in the notice of appeal. petition to review a permit or variancee revocation shall include a copy of the permit or variance, the Noise Control Officer's revocation notice, including his reasons for revocation, and the reasons for appeal.~~

#### **SEC. 36.43034. DISMISSAL OF APPEAL. PETITION.**

~~The appellant petitioner may dismiss an appeal his petition at any time before the appeal hearing by filing a written notice of dismissal with the Clerk with a copy to the noise control officer. submission of the case to the Noise Control Hearing Board, without a hearing or meeting of the Noise Control Hearing Board. The Clerk of the Noise Control Hearing Board shall notify all interested persons of such dismissal.~~

#### **SEC. 36.435. PLACE OF HEARING.**

~~—All hearings shall be held at the Hearing Room, 1600 Pacific Highway, San Diego, California, unless some other place is designated by the Noise Control Hearing Board.~~

#### **SEC. 36.431. HEARING OFFICER.**

All appeals filed under this chapter shall be heard by a County hearing officer appointed pursuant to sections 650 et seq. of the County Administrative Code. The Clerk shall assign the matter to a hearing officer on a rotating basis from the list of appointed hearing officers.

**SEC. 36.43236. SCHEDULING NOTICE OF HEARINGS.**

The Clerk shall schedule a hearing within 20 days after receipt of the notice of appeal and serve the notice of hearing on the appellant and the noise control officer. The notice shall provide the date, time and location of the hearing. of the Noise Control Hearing Board shall mail or deliver a notice of hearing to the petitioner and the Noise Control Officer.

**SEC. 36.4337. HEARING PROCEDURES.**  
**EVIDENCE.**

An appeal hearing authorized by this chapter shall be conducted as follows:

(a) Every witness before testifying shall take an Oath. Oral evidence shall be taken only on oath or make an affirmation.

(b) The noise control officer shall present evidence that explains why the variance was denied, approved conditionally, suspended or revoked.

(c) The appellant shall present evidence that supports his/her contention that the noise control officer's determination denying, conditionally approving, suspending or revoking the variance was erroneous.

(db) Each party shall have the these rights to: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues, even though the matter was not covered in the direct examination; to impeach any witness regardless of which party first called the witness him to testify; and to rebut the evidence against the party. him. The noise control officer may call and examine the appellant or any employee or agent of the appellant as a witness during the noise control officer's case in chief or during the rebuttal case. The hearing officer may examine the appellant or any of the appellant's employees or agents If respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(ee) Strict rules of evidence shall not apply. Evidence that might otherwise be excluded under the Evidence Code may be admissible if the hearing officer determines that it is. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted and of the kind that reasonably prudent if it is the sort of evidence on which responsible persons are accustomed to rely on in making decisions. the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in

~~civil actions. All The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized by the Evidence Code, however, shall apply to the hearing. The hearing officer shall exclude irrelevant and cumulative in civil actions and irrelevant and unduly repetitious evidence, shall be excluded.~~

~~(f) The hearing shall be conducted in English. If the appellant or any of appellant's witnesses require an interpreter the appellant is responsible to provide a State certified interpreter at appellant's expense.~~

#### **~~SEC. 36.438. PRELIMINARY MATTERS.~~**

~~—Preliminary matters such as setting a date for hearing, granting continuances, approving petitions for filing, allowing amendments and other preliminary rulings not determinative of the merits of the case may be made by the chairman or any two members of the Noise Control Hearing Board without a hearing or meeting of the Noise Control Hearing Board and without notice.~~

#### **~~SEC. 36.439. OFFICIAL NOTICE.~~**

~~—The Noise Control Hearing Board may take official notice of any matter which may be judicially noticed by the courts of this State.~~

#### **~~SEC. 36.43440. CONTINUANCES.~~**

~~The hearing officer may grant a continuance requested by either party for good cause. The chairman or any two members of the Hearing Board shall grant any continuance of 15 days or less, concurred in by petitioner, and the Noise Control Officer, and may grant any reasonable continuance; in either case such action may be ex parte, without a meeting of the Hearing Board and without prior notice.~~

#### **~~SEC. 36.43541. DECISION.~~**

~~The hHearing officer Board shall issue a written decision with five days after the hearing is concluded and file it with the Clerk. The decision shall may affirm, modify or overrule the nNoise cControl oOfficer's decisions that was appealed. The decision shall state the reasons for the hearing officer's decision. The Clerk shall serve a copy of the decision on the appellant and provide a copy to the noise control officer. The decision shall be effective after it has been served by the Clerk. -on variance applications, and shall be guided by the same considerations as set forth in Section 36.424 of this chapter. The affirmative vote of not less than five (5) members of the Hearing Board shall be necessary for any action of the Board. The decision shall be by written order. If requested by either party, the decision shall contain a brief statement of facts found to be true, the determination of the issues presented and the order of the Hearing Board. A copy of the~~

~~decision shall be mailed or delivered to the Noise Control Officer and the petitioner, and to every person who files a written request for the decision with the Clerk of the Board of Supervisors.~~

**~~SEC. 36.442. EFFECTIVE DATE OF DECISION.~~**

~~—The decision shall become effective 15 days after delivering or mailing a copy of the decision, as provided in Section 36.441 or the Hearing Board may order that the decision shall become effective sooner.~~

**~~SEC. 36.443. SEVERABILITY.~~**

~~—If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or applications of the provisions of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are hereby declared to be severable.~~